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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Review, Revise, And Consider Alternatives to the Power Charge Indifference Adjustment	Rulemaking 17-06-026

**COMMENTS OF THE
CALIFORNIA COMMUNITY CHOICE ASSOCIATION**

In accordance with Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), and Commission's July 10, 2017, *Order Instituting Rulemaking to Review, Revise and Consider Alternatives to the Power Charge Indifference Adjustment* (the OIR), the California Community Choice Association (CalCCA) respectfully submits these comments.[1]

I. Introduction.

CalCCA commends the Commission for opening this rulemaking to undertake a much needed review of the Power Charge Indifference Adjustment (PCIA). The issues the OIR raises are pressing. On June 1, 2017, Pacific Gas and Electric Company (PG&E) made its 2018 Energy Resource Recovery Account (ERRA) filing, which indicates that $2.26 billion, or 42% of the utility's 2018 vintage generation portfolio, is above market.[2] All California customers, including bundled customers and customers taking service from Community Choice Aggregators (CCAs) and Energy Service Providers (ESPs) would benefit from a framework that better assures that the

1 The OIR made operating CCAs respondents in this proceeding and directed them to file responses to the OIR. *See* OIR Ordering Paragraphs (OP) 6 and 7. These comments serve as the comments required pursuant to OP 7 for Apple Valley Choice Energy, CleanPowerSF, Marin Clean Energy, Peninsula Clean Energy Authority, Redwood Coast Energy Authority, Silicon Valley Clean Energy Authority and Sonoma Clean Power Authority and each of these CCAs has independent party status and reserves the right to make individual filings in this proceeding. (MCE is listed as a Certified CCA in Appendix B to the OIR; however MCE was omitted from the list of named respondents in OP 6. MCE too should be a respondent and have independent party status.) Lancaster, Pico Rivera and San Jacinto are filing separate comments in this proceeding.

2 *See* A.17-06-005, PG&E Testimony, page 9-15, Table 9-4.

Investor Owned Utilities (IOUs) prudently manage their costs to avoid such a dramatic discrepancy between market prices and utility purchases.

The OIR ordered respondents to comment on the OIR itself, the proposed Guiding Principles and the preliminary scoping memo.[3] CalCCA generally supports the OIR, which identifies most of the key issues, but offers some refinements to the list of principles and the issues in the case. These refinements highlight the rights of CCAs and their customers under state law to determine their own generation portfolios provided that the resulting procurement meets the requirements of state law. These comments also (1) identify the need for the Commission to ensure going forward that IOUs prudently manage their portfolio as the electric industry continues to evolve and (2) stress the need for adequate transparency. Finally, CalCCA offers procedural suggestions to facilitate timely, efficient and effective examination of the issues.

II. CalCCA and Its Members

Noting that the PCIA touches a wide range of customers, a wide variety of interests, and a large number of load-serving entities,[4] the OIR made all California CCAs respondents. CalCCA is a nonprofit organization formed in June 2016 to represent the interests of California's CCA programs in regulatory and legislative matters. Local communities are investigating and establishing CCA programs to customize and accelerate efforts to address climate change, renewable energy development, and other important environmental and social issues.

The operational CCA programs in California – Apple Valley Choice Energy, CleanPowerSF, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy Authority, Redwood Coast Energy Authority, Silicon Valley Clean Energy Authority, and the

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3 *See* OIR at 16; OPs 6 and7.

4 *See* OIR at 2.

Sonoma Clean Power Authority – comprise CalCCA's current voting members. In addition, CalCCA's affiliate members include Central Coast Power (counties of San Luis Obispo, Santa Barbara and Ventura), East Bay Community Energy Authority (Alameda County), Monterey Bay Community Power Authority, Pico Rivera Innovative Municipal Energy, Valley Clean Energy (city of Davis and Yolo County), the cities of Corona, Hermosa Beach, San Jose, Solana Beach, and San Jacinto, the counties of Los Angeles and Placer, and Western Riverside Council of Governments.

CalCCA's interests in this proceeding stem from both their operations and their role as advocates for customers, including bundled customers, within the boundaries of their service territories. The residents and businesses within these territories require reliable, clean electric service at reasonable prices and a fair determination of the costs customers must bear to ensure bundled customer indifference.

III. Principles

The guiding principles included in the OIR's draft scoping memo fairly recognize tenets important to bundled ratepayers, but leave out a handful of corresponding provisions critical to CCAs and their customers. CalCCA suggests below both a revision to Principle 5, and the addition of five other principles, to better reflect the rights of CCAs and their customers and the importance of prudent portfolio management by the IOUs.

A. Guiding Principle 5 Should Be Modified to Recognize California Policies to Promote Development of CCAs.

Guiding Principle 5 in the OIR should be modified as follows:

5. Any methodology to ensure bundled customer indifference should <u>be consistent with state policies to promote CCAs and should</u> not create unreasonable obstacles for customers of non-IOU energy providers.

The Legislature and the Commission have recognized the state's interest in promoting the development of CCAs and other competitive options for customers. The Commission should strive to do more than simply avoid the creation of "unreasonable obstacles" for CCA customers.

In Decision 04-12-046 the Commission recognized the Legislature's express policy to "permit and *promote* CCAs by enacting AB 117…"[5] The Legislature made this intent to promote CCA even more explicit when it passed Senate Bill (SB) 790 in 2011. The legislative declaration section of SB 790 states that California has "a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of community choice aggregation programs."[6]

CCAs are unlike IOUs or ESPs in that they have been created by elected officials to advance specific public policy objectives. Simply striving to avoid "unreasonable obstacles" does not go far enough to support local government or statewide policy directives. The Commission should examine any new non-bypassable charge (NBC) methodologies consistent with these policies to promote, protect, and support the formation of CCAs.

B. Additional Principles Necessary to Better Reflect the Rights of CCAs and Their Customers and IOUs' Obligations to Prudently Manage Their Portfolios.

1. The Principles Should Recognize and Respect CCAs' Responsibility to Develop Their Own Generation Portfolios.

The following two guiding principles should be added to the list:

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5 D. 04-12-046 at 1 (emphasis added).

6 SB 790; 2(g); Pub. Util. Code § 707(a)(4)(a). *See also* D.12-12-036 at 6 (citing SB 790, § 2(h), and Pub. Util. Code § 707(a)(4)(A)) ("In SB 790, the legislature directed the Commission to develop rules and procedures that 'facilitate the development of community choice aggregation programs, … foster fair competition, and … protect against cross-subsidization paid by ratepayers.'".). All further statutory references are to the Public Utilities Code, unless otherwise noted.

7. Any methodology to ensure bundled customer indifference should allow CCAs to be solely responsible for all generation procurement activities on behalf of their customers, except as expressly required by law.
8. Any methodology to ensure bundled customer indifference should allow a CCA to elect to pay for its share of stranded costs in a manner that complements the CCA's particular procurement needs and goals.

Proposed principle 7 reflects Section 366.2(a)(5). State law recognizes CCAs as the primary entity responsible to procure generation on behalf of their customers,[7] and the OIR should include this provision as a guiding principle. The Legislature made CCA local governments responsible for a CCA's generation portfolio. CCA local governments strive to have the portfolio reflects their customers' needs and values, including, for example, environmental profile, job creation, cost, and reliance on local resources. Proposals that mandate the transfer of electric supplies, renewable energy credits (RECs) and resource adequacy (RA) purchases from an IOU to a CCA could improperly infringe on a CCA's obligation to develop its own portfolio.

Proposed principle 8 provides that CCAs should be allowed to choose an approach for ensuring bundled customer indifference that best comports with their particular business. CalCCA recognizes that the IOUs have entered into long-term contracts to meet the needs of customers who are departing in significant numbers as CCAs form. This situation provides an opportunity for the IOUs to sell or otherwise transfer some of their excess resources to CCAs to the extent CCAs have a need for additional resources. However, to comply with Section 366.2(a)(5), any such transfers should be voluntary.

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7 Section 366.2(a)(5).

Each CCA is at a different stage of development and has different objectives. Provided that bundled customer indifference is achieved, and that all customers pay their fair share, CCAs can and should be allowed to choose between alternatives, including for example, paying for and obtaining specific IOU resources, paying only for above market costs that are transparent, fairly and accurately calculated, and diligently mitigated, and/or achieving greater certainty through lump-sum, upfront payments.[8]

Moreover, any stranded cost recovery methodology should avoid adversely impacting CCAs that enter into long-term contracts. For example, the mandatory transfer of RA and REC attributes to CCAs would penalize those CCAs that have already largely contracted for the resources they need, forcing them to find buyers for excess resources that the IOU rather than the CCA opted to buy. Similarly, an NBC that fluctuates with and is correlated to short-term market prices could penalize CCAs that enter into long-term contracts that otherwise would have provided a hedge against this fluctuation.

2. The NBC Methodology Should Not Reward Imprudent IOU Procurement and Portfolio Management.

The following guiding principle should be added to the list:

9. Any methodology to ensure bundled customer indifference should only include legitimately unavoidable costs and account for the IOUs' responsibility to prudently manage their generation portfolio and take all reasonable steps to minimize stranded costs.

The OIR includes as an issue "[o]ptimization of IOU portfolio management (*e.g.*, contract extensions and contract renegotiation) to minimize stranded costs."[9] That issue is

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[8] *See, e.g.,* D.-09-08-015 and D.10-11-011 (describing and approving lump-sum buyout arrangements for publicly owned utilities).

[9] OIR at 9.

important, but Section 365.2 provides that departing load should not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. Moreover, the IOUs can only recover from CCA customers the utility's "net *unavoidable* electricity purchase contract cost attributable to the customer."[10] These statutory provisions necessitate a guiding principle of excluding avoidable costs from NBCs and ensuring prudent IOU procurement and diligent portfolio management to mitigate costs.

Further, the Commission has stated regarding the Cost Responsibility Surcharge (CRS) and Assembly Bill (AB) 117 that the objective of CRS is: "to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize the CRS (and all utilities liabilities that are not required) and promote good resource planning by the utilities."[11] The Commission maintained a ten-year limitation on cost recovery for non-Renewables Portfolio Standard (RPS) resources explaining:

> With respect to non-RPS resources that will be available for more than 10 years but which are limited to 10-year NBC recovery, the utilities can, over time, adjust their load forecasts and resource portfolios to mitigate the effects of DA, CCA, and any large municipalizations on bundled service customer indifference. By the end of a 10-year period, we assume the IOUs would be able to make substantial progress in eliminating such effects for customers who cease taking bundled service during that period.[12]

A cost should not be considered stranded or "unavoidable" if the IOU fails to make reasonable adjustments to its resource portfolio. The fact that 42% of PG&E's 2018 vintage generation portfolio is above market suggests the objective of assuring prudent portfolio management is not being achieved. Rather, the existing methodology rewards the IOUs for any failure to take all available steps to minimize stranded costs by allowing recovery of 100% of

[10] *See* Section 366.2(f)(2).
[11] D.04-12-046 at 29.
[12] D. 08-09-012 at 54-55.

their above market costs with insufficient consideration of whether those costs were incurred prudently. Unless the objective of minimizing stranded costs becomes a higher priority, and IOUs are held accountable for their obligation to prudently manage their portfolio, the Commission can expect to see stranded costs continue to comprise a disproportionate share of customer bills.

3. The NBC Methodology Should Reflect the Benefits Departing Customers Impart to Remaining Bundled Customers.

The following guiding principle should be added to the list:

10. Any methodology to ensure bundled customer indifference should include the value of the benefits that departing customers impart to remaining bundled service customers.

California law seeks a balanced approach to stranded cost recovery that protects both bundled and departing customers. For example, Section 366.2(g) provides that unavoidable energy costs paid by CCA customers "shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits." The Commission has stated, "bundled customers should be no worse off, *nor should they be any better off* as a result of customers choosing alternative energy suppliers."[13] The Commission has a responsibility to promote fair competition between CCAs and IOUs,[14] and should prevent cross-subsidization of IOU costs.[15]

Following these statutory provisions and precedent requires an accounting of the benefits departed load provides. For example, the departure of CCA customers increases the IOUs' RPS percentage, decreases their need to procure additional resources, and allows the utilities to

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[13] D.08-09-12 at 10 (emphasis added).
[14] Section 365.2.
[15] D.04-12-046 at 3.

dispatch more economically efficient generators. Thus, a principle should be added to the scoping memo that reflects a balanced approach by recognizing the benefits departing customers provide to remaining bundled customers.

4. The NBC Methodology Should Accurately Reflect All Short, Medium, And Long-Term Value Streams.

The following guiding principle should be added to the list:

11. Any methodology to ensure bundled customer indifference should accurately reflect and seek to preserve all short, medium, and long-term value of the resources procured by the utilities.

The present NBC framework values energy on a single year-ahead basis that may not adequately reflect long-term hedge value. The IOUs' recent Portfolio Allocation Methodology (PAM) proposal would have exacerbated this problem by valuing energy at an even shorter-term spot market price. Similarly, the IOUs' PAM proposal would have reduced the value of long-term renewables contracts to California users. This would mean that valuable Portfolio Content Category (PCC) 1 resources in the hands of the utilities could have been converted to PCC 3 resources in the hands of CCAs. But even if this problem had been solved, the IOUs' proposal could have eroded the value of renewable contracts because although the IOUs have certainty about the nature and amount of resources within their portfolios, the amounts and types of resources allocated to the CCAs could have fluctuated from year-to-year or been comprised of less valuable "chunks." Finally, to the extent that IOUs decline to sell excess resources directly to CCAs but sell them instead to energy traders, such traders may then in turn sell the resources to CCAs with some margin. The traders' margin becomes value that is lost to California consumers.

Any NBC mechanism should seek to preserve the full value of any excess utility resources so that, to the extent possible, California customers obtain the maximum benefit of existing resources rather than losing or transferring some or all of the value to traders or other jurisdictions. Moreover, the valuation mechanism should recognize the full value of utility resources and make utilities accountable for any forfeiture of this value that could have been preserved for bundled customers and CCA customers by prudent management.

IV. Additional Issues.

The OIR sets forth a fairly comprehensive list of issues. CalCCA identifies only a few additional issues.

1. The OIR should address IOU owned generation. Departing customers pay the above market costs of IOU owned generation. As in the case of contracts, the rulemaking should explore alternatives to maximize the value of these resources to California consumers and identify approaches to minimize stranded costs. In addition, not all IOU costs relating to IOU owned generation incurred *after* the departure of a CCA's load can be considered to be costs incurred *on behalf of* that load.[16] The OIR should consider developing rules addressing this issue, which possibly differentiate between types of IOU costs (capital, replacement, repair, operations).

2. The rulemaking should address the factors used to allocate stranded costs and designate the appropriate mechanism for stranded cost recovery between bundled and unbundled customers as well as the rate design policies used to allocate these costs both by function (i.e. transmission, distribution, generation) or by customer class (*e.g.* residential, commercial).

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[16] The problem becomes more apparent as the time between a load departure and an IOU expense becomes longer: Why should load that departed 20 years ago be required to continue to pay for repair costs at an IOU-owned facility?

Currently, such allocation and designation occurs on a program-by-program basis without a clear standard, *e.g.*, whether the costs of a particular IOU procurement program are eligible for recovery pursuant to the PCIA, or some other mechanism such as the Cost Allocation Mechanism. This proceeding should determine a clear, definitive standard that must be met in order for the IOUs to recover costs via the PCIA, or its replacement. The evaluation of stranded costs should also address equity and reasonableness of allocations to rate classes (*e.g*. residential versus large commercial) as well as to rate components (*e.g.* generation versus transmission and distribution).

3. The rulemaking should establish a list of, and determine a methodology to value, the benefits that departing customers provide to bundled service customers.

4. The rulemaking should address treatment of the IOUs' negative indifference balance amounts and the effects on the Competition Transition Charge (CTC) that may result from any revision to, or replacement of, the PCIA. The issue of negative indifference amounts was raised most recently in A.16-06-003, PG&E's 2016 ERRA application. PG&E proposed to eliminate its negative indifference amount balance for pre-2009 departing load vintages. In D.16-12-038, however, the Commission deferred this issue to a second phase of the proceeding.[17] On May 22, 2017, the Commission issued a ruling consolidating each of the IOUs' ERRA proceedings within A.16-04-018 *et al*,[18] which is to address PG&E's proposal to eliminate the negative indifference balance.[19]

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17 D.16-12-038, at 22, OP 4.

18 *Administrative Law Judge's Ruling Consolidating Proceedings and Establishing Phase II*, A.16-04-018, May 22, 2017, at 3.

19 *Assigned Commissioner's Ruling Amending Scope of by Creating A Second Phase*, A.16-04-018, November 1, 2016, at 3.

Notwithstanding the Commission's intent to address negative indifference amounts in the consolidated ERRA proceeding, this Rulemaking is the appropriate forum to analyze this issue as part of a holistic reform of the PCIA. Not having a negative indifference amount to off-set the CTC could result in inappropriate IOU collections from CCA customers that would benefit bundled customers at the expense of CCA customers. Such a result would violate the rule of bundled customer indifference. Moreover, this issue is not IOU-specific, and it should be addressed as part of the holistic statewide reform of the PCIA to ensure a consistent and equitable policy.

5. This OIR should address the continuing inability of CCA legal and regulatory staff to review confidential IOU information necessary to determine the proper amount of the PCIA or a successor exit fee. In their application for Commission approval of the "Portfolio Allocation Methodology," the IOUs recognized "the need for all LSEs to be fully informed in the development of their portfolios," and that "this will require visibility into the costs and attributes inherent in [the IOUs'] portfolio."[20] The IOUs proposed to have a separate phase in the PAM proceeding to address confidentiality issues.[21] CCAs have filed an application with the Commission to allow specified CCA legal and regulatory employees access to confidential IOU information for purposes of evaluating the PCIA, under an appropriate non-disclosure agreement that would keep such information from CCA employees who work on energy market transactions.[22]

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20 Joint Utilities' Direct Testimony in Support of Application for Approval of the Portfolio Allocation Methodology for all Customers at 44.

21 "The Joint Utilities recognize the need for a formal process to provide portfolio and contract data to LSEs as a part of PAM, and anticipate that a detailed process will need to be put in place that balances necessary transparency and planning certainty for LSEs; rules to protect customers and market integrity; and contractual counter-party confidentiality obligations." Id. at 45.

22 *See* CalCCA Petition for Modification of Decision 11-07-028, filed on June 13, 2017 in docket R. 05-06-040.

In order to fully and effectively participate in this OIR, CCAs need to have access to such confidential data about the IOUs' portfolios. We encourage the Commission to either take up the existing CCA application promptly, or develop a separate mechanism early in the OIR process to allow CCA legal and regulatory personnel access to the data necessary to fully evaluate the issues raised by the OIR.

6. This OIR should also address providing transparent information about above market costs to bundled and CCA customers. In particular, the OIR should explore how above market costs should be reflected in the bills of bundled and CCA customers. Customers paying IOU costs are entitled to accurate and clear information on the nature of these costs.

V. Procedural Matters

A. Use of Workshops and Hearings

CalCCA favors use of a combination of workshops and evidentiary hearings to address the issues in this case. Each workshop could be accompanied by a report by the Energy Division and an opportunity for comment by the parties. After an initial phase of mutual education through workshops, the Commission should schedule evidentiary hearings as necessary. CalCCA believes that at least two workshops would be beneficial: one to discuss the details of the existing PCIA and one to give parties the opportunity to present and discuss alternatives. CalCCA is not proposing a particular schedule, but notes that there are currently underway a number of important proceedings that require participation by the CCAs and the IOUs. These include the Integrated Resource Planning proceeding, the CCA proceeding exploring bonds, PG&E's 2018 ERRA application, and the energy efficiency business plan proceeding. The Commission should review and coordinate the schedules in those cases with this proceeding to ensure that all parties, including those having limited resources, are able to participate effectively.

B. Categorization and the Need for Reporting Ex Parte Contacts

While CalCCA agrees with the Commission's preliminary categorization of this proceeding as quasi-legislative,[23] any discussions with decision-makers within the docket should be subject to the disclosure requirements that apply to ratesetting proceedings pursuant to the Commission's rules. The OIR notes "*[e]x parte* communications are allowed without restriction or reporting requirement in a quasi-legislative proceeding," and preliminarily determines "no *ex parte* restrictions or reporting requirements apply in this proceeding."[24]

However, the structure of the PCIA and the related bundled customer indifference requirements will critically affect the continuing viability of CCAs and other retail choice providers. The gravity of these issues to the State, CCAs, ESPs and ratepayers warrants a substantial degree of transparency with regard to communications between Commission decision-makers and entities interested in the outcome of this docket.

Moreover, as noted above and in the OIR, it is likely hearings may be needed within the proceeding. Transparency is paramount within hearings, where ALJs and other decision-makers will make critical determinations of fact, law and procedural and substantive motions.

Under SB 215 (2016), the Commission may, via order or ruling, increase restrictions related to *ex parte* communications beyond those that would otherwise apply in a quasi-legislative proceeding.[25] Given the need for transparency in this docket, CalCCA respectfully

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[23] OIR at 11.

[24] *Id.*

[25] Section 1701.4(c)(1); Draft Rule 8.2(d) (implementing Cal. Pub. Util. Code § 1701.4(c)) (as proposed in Draft Resolution ALJ-344 (Mar. 4, 2017), Appendix A, at pp. 23-24) ("Notwithstanding subsections (a) and (c) of this rule, the assigned Commissioner may issue a ruling to restrict or prohibit ex parte communications in a quasi-

requests the Commission issue an order or ruling determining that communications with decision-makers in this proceeding are subject to the disclosure requirements that apply to ratesetting proceedings pursuant to the Commission's *ex parte* rules.

VI. Conclusion

CalCCA appreciates the Commission's determination to open this rulemaking and looks forward to participating actively in the proceeding.

Dated: July 31, 2017

Respectfully submitted on behalf of CalCCA by,

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legislative or ratesetting proceeding or to require reporting of ex parte communications in a quasi-legislative proceeding.").